

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
BRIAN S. MILLER, JUDGE

DIVISION II

CA07-716

March 12, 2008

MELISSA CAROL THETFORD
APPELLANT

v.

ELECTRIC COWBOY, INC.,
FREMONT PACIFIC, AND
DEATH AND PERMANENT TOTAL
DISABILITY TRUST FUND

APPELLEES

AN APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[E910613]

REMANDED

Appellant Melissa Carol Thetford appeals the April 19, 2007, decision of the Workers' Compensation Commission affirming with modifications the decision of the Administrative Law Judge. On appeal, Thetford argues that the Commission erred: (1) by finding that Thetford's functional capacity evaluation (FCE) was inadmissible; (2) by finding that Thetford is not permanently totally disabled; (3) by finding that Thetford is not entitled to wage-loss disability benefits in excess of her permanent anatomical disability rating; (4) by finding that Thetford failed to participate in and cooperate with rehabilitation and job placement assistance without reasonable cause; (5) by finding that Thetford was unable to sustain her

burden of proof that she is unable due to her compensable injury to earn meaningful wages in her same or other employment; (6) by finding that the Death and Permanent Total Disability Trust Fund has no liability; (7) by finding that Dr. Reddy's reference to "her" employment only meant Thetford's bartender job; (8) by finding that no objective evidence existed concerning Thetford's pain due to her three-level disc disease; (9) by finding that it was not unsafe for Thetford to work while taking her narcotic medication; (10) by finding that Electric Cowboy and Fremont Pacific are entitled to a \$955.85 credit for overpayment and a credit for the time she earned wages against future benefits. Electric Cowboy and Fremont Pacific (Electric Cowboy) cross-appeal arguing that the Commission erred by finding that the continued treatment by Thetford's authorized physicians, including management of her prescription medications, is reasonably necessary in connection with her compensable injury. We remand for further findings of fact.

Thetford suffered a compensable back injury while working for Electric Cowboy on May 1, 1999. Since this injury, Thetford has undergone three back surgeries. On February 28, 2002, Thetford was found to be at maximum medical improvement (MMI) and was assigned a permanent impairment rating of fourteen percent (14%) to the body as a whole for three-level disc disease. Between July 3, 2002, and November 25, 2003, Thetford was again found to be in her healing period. At the end of this healing period, Thetford was assigned an additional permanent impairment rating of five percent (5%) and referred to her personal physician for medication management. At the time of the hearing, Electric

Cowboy had accepted and paid Thetford's nineteen percent (19%) permanent impairment rating.

Thetford testified that all of the physicians she had seen regarding her three-level disc disease, except one, prescribed her narcotic pain medication; that she was currently being prescribed 10.65 Hydrocodone and Soma 350 by her personal physician, William Lee Tracy, M.D. She said that the medicine made her pain bearable but that it also made her groggy and tired; that her pain limited her activities; that her pain had gotten worse over the years; that no physician had ever stopped prescribing her pain medication; and that Dr. Tracy had not suggested that she come off of her medication.

Thetford stated that Edie Nichols, the vocational rehabilitation counselor, came to her house and that they discussed jobs and careers in which Thetford was interested. Nichols sent Thetford a pamphlet about school and some information about jobs she had found for Thetford. Thetford said that she did not call Nichols back because she could not perform the jobs in which Nichols attempted to place her; that she had not made any efforts to return to the workforce since she was declared MMI in November 2003; and that no physician had ever told her she could return to employment in any capacity.

Nichols testified that she arranged for Thetford to have a functional capacity evaluation (FCE) and that the FCE showed that Thetford could safely perform work at the light physical demand level. After receiving the results of the FCE, Nichols began matching Thetford's skills with jobs appropriate for Thetford;

however, Thetford never followed up with her about job opportunities or classes. According to Nichols, Thetford never demonstrated any real interest or put forth any effort to pursue any of the retraining or job placement assistance offered to her.

Dr. Tracy testified that he had been Thetford's primary physician since October 30, 2003. He said that Thetford could not function day to day without her pain medication. Dr. Tracy opined that Thetford was totally disabled.

The ALJ found, among other things, that Thetford failed to prove by a preponderance of the evidence that she was entitled to permanent total disability or that she was entitled to receive wage-loss benefits in excess of her permanent anatomical impairment ratings. The ALJ further found that Electric Cowboy was entitled to a credit in the amount of \$955.85 for overpayment of benefits to Thetford. The Commission affirmed the ALJ's decision with the modification that Electric Cowboy was entitled to a credit for the time Thetford earned wages from November 2000 through May 2001. This appeal and cross-appeal followed.

In appeals involving claims for workers' compensation, this court views the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's decision and affirms the decision if it is supported by substantial evidence. *See Kimbell v. Ass'n of Rehab Indus. & Bus. Companion Prop. & Cas.*, 366 Ark. 297, 235 S.W.3d 499 (2006). Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion. *Id.* The issue is not whether the appellate court might have reached

a different result from the Commission; if reasonable minds could reach the result found by the Commission, the appellate court must affirm the decision. *Id.* We will not reverse the Commission's decision unless we are convinced that fair-minded persons with the same facts before them could not have reached the conclusions arrived at by the Commission. *Dorris v. Townsends of Ark., Inc.*, 93 Ark. App. 208, 218 S.W.3d 351 (2005).

The Commission found that Thetford failed to meet her burden of proof that she was entitled to permanent total disability or that she was entitled to wage-loss disability benefits in excess of her impairment ratings. In making these findings, the Commission failed to make specific findings regarding the effect, if any, that Thetford's use of pain medication had on her ability to work. Without these findings, we are unable to accurately review the Commission's decision. Accordingly, we remand this case for the Commission to make specific findings as to what effect, if any, Thetford's use of pain medication has on her ability to work.¹

Remanded.

HART and HEFFLEY, JJ., agree.

¹The Commission also found that Thetford was entitled to additional medical treatment. On remand, we direct the Commission to make specific findings of fact regarding Thetford's continued need for such treatment.